

DEPARTMENT OF JUSTICE
Office of the Assistant to the Attorney General
Washington 25, D. C.

May 11, 1950

CIRCULAR NO. 4122

TO ALL UNITED STATES ATTORNEYS

Subject: Representation of Government Employees and Servicemen

It has long been the general policy of the Department to afford counsel and representation to Government employees and servicemen who are sued civilly or charged with violation of local or state criminal laws as a result of the performance of their official duties. The amenability of the United States to suit for the torts of its employees and of members of the armed forces (28 U.S.C. 2674) is an additional reason for the continuation and effectuation of this policy. Therefore, in situations where time does not permit communication through Department heads in Washington, United States Attorneys may, upon the request of a local officer of a Federal agency, afford counsel and representation to Government employees and servicemen in such cases. In the case of all such requests, the Assistant Attorney General, Claims Division, should be promptly notified and advised by the United States Attorney of the circumstances of the case.

In cases in which it is certain that no property damage, personal injury, or death resulted, such as minor traffic violations, the United States Attorneys may in their discretion decline to make court appearances on behalf of employees or servicemen, unless specifically authorized to do so by the Department.

The potential liability of the United States likewise makes it important to ascertain as early as possible the basic facts, extent of injury or damage, and the names of witnesses in every case, civil or criminal, based upon the alleged dereliction of a Government employee or serviceman. For the same reason, pleas of guilty should be entered in criminal cases only after careful consideration of all factors involved. The United States Attorneys should also give consideration to the advisability of removing such cases from state courts to the United States District Court. See 28 U.S.C. 1442.

In cases where an appearance or answer date is sufficiently in the future and the circumstances permit of delay, the United States Attorney may advise the Federal officer requesting representation of an employee or serviceman to communicate the request through the usual channels. However, in all cases in which it appears likely that a tort suit will

- 2 -

ultimately be brought against the United States on account of the occurrence involved, the United States Attorney should take steps to learn the pertinent facts and the names of witnesses as soon as he is advised of the occurrence. In cases where the employee or serviceman is being represented by a legal officer of the agency or military or naval establishment with which the individual is connected, the United States Attorney may cooperate with such legal officer to the end that the interests of the United States are properly protected.

Whenever an accident involving Government personnel results in major damage or death, the United States Attorney in whose district such accident occurs may request the nearest Division office of the Federal Bureau of Investigation to initiate an appropriate investigation, whether or not a request for representation has been made or a prosecution or suit commenced on account of the accident.

For the Attorney General

Peyton Ford
The Assistant to the Attorney General

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CIRCULAR NO. 4122

Supplement No. 1

TO HEADS OF ALL DIVISIONS AND BUREAUS

Subject: Requests for Representation of Government Employees by
United States Attorneys

All requests for the representation by United States Attorneys of Government employees in suits and prosecutions against them based upon the performance of their duties shall be assigned to the Claims Division for handling. If it later appears that any such suit or prosecution is not based upon an occurrence which might be the basis of a tort action or claim against the United States, the case may be reassigned to the appropriate Division for further supervision.

For the Attorney General

Peyton Ford
The Assistant to the Attorney General